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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 09/125,700 Confirmation No.: 8084

Applicant(s): Fuhrmann

Filed: 10/23/1998

Art Unit: 2642

Examiner: Chiang, Jack

Title: Radiotelephone

Attorney Docket No.: 873.0185, U1 (US); NC13479US

Customer No.: 29,683

Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Response To Restriction

Sir:

This is in response to the Office Action mailed 09/07/2005 in regard to the above-identified patent application.

The Office Action mailed 09/07/2005 is a new restriction; not a correction of the restriction agreed to by telephone on 12/6/2002 and later confirmed in writing by the examiner in the office action dated 12/13/2002 along with the Interview Summary of the telephone interview of 12/6/2002. The first restriction merely restricted the claims into two groups; Group I (claims 1-9, 11-13 and 15-17) and Group II (claims 18-24). The examiner is directed to the Interview Summary mailed with the office action dated 12/13/2002. The examiner is also direct to the sections 1-4 of the office action dated 12/13/2002 wherein the examiner stated the reason for the restriction was because the Groups were related as combination and subcombination as evidenced by different classifications.

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The first restriction was only a combination/subcombination restriction as explained in detail by the examiner in Section 2 of the office action of 12/13/2002. The first restriction agreed to by telephone on 12/6/2002 and later confirmed in writing by the examiner in the office action dated 12/13/2002 did not include an additional separate species restriction.

Although section 1 of the office action dated 12/13/2002 mentions "(such as Fig. 5)" and "(such as Fig. 1)", the first restriction never required applicants to elect a drawing figure or a species. Applicants never made an election between Fig. 1 or Fig. 5 because the examiner never made a species restriction until the office action dated 09/07/2005. The first restriction never required applicants to elect between using screws and using a press-on/catch as the examiner now mentions in the second restriction office action mailed 09/07/2005. The second restriction office action mailed 09/07/2005 now requires applicants to elect a species; either the species shown in Fig. 1 or the species shown in Fig. 5. Therefore, the restriction office action mailed 09/07/2005 is a new second restriction (a new species restriction; not merely a combination/subcombination restriction as in the first restriction); and not merely a correction of the first restriction.

The examiner has, in effect, withdrawn the application from appeal and has reopened prosecution.

The examiner stated that the amendment filed on 6/9/03 canceled all claims drawn to the elected invention. This is incorrect. Applicants elected Group I (claims 1-17 as

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specified by the examiner) and cancelled the claims of Group II (claims 18-24 as specified by the examiner). The examiner stated that the remaining claims are not drawn to the elected invention because the original claims 1-17 are directed to Fig. 5 and the present amended claims 1-17 are directed to Fig. 1. This is ridiculous. Applicants elected Group I (claims 1-17 as specified by the examiner). Contrary to prior belief, claims 1-17 did not read on Fig. 5. If the applicants were limited by the examiner to only claims 1-17 and Fig. 5, the examiner would have been limiting the applicants to elect no possible claims. The examiner never gave applicants the opportunity to elect both claims 1-17 and Fig. 1; at least not until this new second restriction office action.

Claims 1-17 before the amendment filed on 6/9/03 were broad enough to read on Fig. 1. Therefore, even if the examiner's attempt to classify the second restriction office action of 09/07/2005 as a "correction", the examiner's statement that the claims are not drawn to the elected invention is incorrect. Claims 1-17 as pending before the amendment filed on 6/9/03 read on the species shown in Fig. 1. For example, before the amendment filed on 6/9/03 claim 1 recited "by a press-on/catch". Obviously, claim 1 read on Fig. 1. Before the amendment filed on 6/9/03 claim 15 recited "by a press-on/catch closure". Obviously, claim 15 read on Fig. 1. Before the amendment filed on 6/9/03 claim 16 recited "by a press-on/catch closure". Obviously, claim 16 read on Fig. 1. Before the amendment filed on 6/9/03 claim 17 recited "a press-on/catch closure". Obviously, claim 17 read on the species of Fig. 1.

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Applicants' attorney hereby elects the species shown in Fig.

1. Claims 1-9, 11-13 and 15-17 read on the elected species.

In the event the examiner does not allow applicants to proceed with claims 1-9, 11-13 and 15-17 and Fig. 1, applicants' attorney will file a petition to have the examiner's restriction practice reviewed (especially because limiting the applicant to claims 1-17 and Fig. 5, the examiner would have been limiting the applicants to elect no possible claims).

Should any unresolved issue remain, the examiner is invited to call applicants' attorney at the telephone number indicated below.

Respectfully submitted,

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10/7/05
Date

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October 7, 2005
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